

***HAVLISH* PLAINTIFFS' RENEWED MOTION
FOR AN ORDER CREATING A COMMON BENEFIT FUND AND
AUTHORIZING CERTAIN DISBURSEMENTS THEREFROM**

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x
2
3 In re: Terrorist Attacks on
3 September 11, 2001
4 03 MDL 1570(GDB)(FM)
4 -----x
5 New York, N.Y.
5 April 15, 2010
6 11:30 a.m.
6
7 Before:
8
9 HON. GEORGE B. DANIELS,
10 District Judge
11 HON. FRANK MAAS,
11
12 Magistrate Judge
12
13 APPEARANCES
13
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24 BY: ANDREA BIERSTEIN
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2 (Appearances cont'd)
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1 04F6MDLC

2 (In open court; case called)

3 LAW CLERK: All parties please stand and state your
4 name, starting with plaintiff.

5 THE COURT: We don't need to go through everybody.
6 The court reporter I think has everyone's appearance.

7 Let me, along with Magistrate Judge Maas, first
8 indicate where I think we are and talk about a schedule moving
9 forward. I have consulted with Magistrate Judge Maas and this
10 is what is going to happen and this is what I propose: First
11 of all, I will be issuing within weeks a decision or decisions,
12 and I am still finalizing how that is going to go, with regard
13 to 90 percent of the outstanding motions. Some of the motions
14 have separate issues and they are pretty much dealt with by
15 issues opposed to by individual defendant. You will be getting
16 that in the next few weeks.

17 In anticipation of that, this is what I would like the
18 parties to do: I am going to ask you to revise your proposed
19 scheduling order once you see my decision. You can start
20 talking about that now. I want you to revise it on a schedule
21 that will begin full-blown discovery as of the July 15th
22 conference that we will schedule from here. I am going to ask
23 you to submit that to Magistrate Judge Maas.

24 To the extent you agree on the schedule and to the
25 extent that you disagree, I want you to submit that to

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1 Magistrate Judge Maas by June the 14th. So I anticipate that
2 in several weeks you will get the decision, digest that, and
3 you will have time to see who is here, who is not here, and
4 figure out whether or not the disagreements you have about
5 scheduling, work out what you can, and propose it to Magistrate
6 Judge Maas and give it to him by June 14th. So that I
7 anticipate the schedule will begin after July 15 and, we will
8 schedule the next conference for July 15th.

9 What I am going to you also to consider once you see
10 that, the plaintiffs can consider whether or not you can file a
11 consolidated or some consolidated complaints. I think we may
12 still have 12, 13 outstanding complaints. Let's see as the
13 smoke clears what the landscape is after you get the decision.
14 Look and see whether you can do this in one complaint or
15 consolidate it in one complaint or you can consolidate it in
16 two or three complaints or something in that realm. If
17 necessary, you can discuss that further with Magistrate Judge
18 Maas or myself in the first instance. I think Magistrate Judge
19 Maas will help on that issue.

20 See if that can be done given the committees that we
21 have and the nature of the issues and maybe that can be done in
22 one, maybe it can be done by different types of plaintiffs,
23 different types of claims. You can evaluate what you think and
24 it might be useful and efficient and even consult the defense
25 with regard to that. It is really simply just a consolidation,

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1 not an amendment. So we don't have to raise any new issues
2 that will slow us down.

3 As soon as you get the decision, start taking about
4 that, thinking about that and see if you can have some idea by
5 June 14th of what you think might happen. If you need to go
6 before Magistrate Judge Maas, he is going to set a conference
7 before that time or after that time then you can address these
8 issues with Judge Maas and get some assistance from him on that
9 issue.

10 Then obviously given the decision on the motion there
11 will be a lot of defendants that need answers. Try to make as
12 early decision as you can whether there will be consolidated
13 complaints. Get that to the parties and they can go ahead and
14 answer. Obviously what I would like to see is that by
15 July 15th the next scheduled conference that most of the
16 decisions are done, we have a schedule to move forward with
17 discovery, the complaints are consolidated that are to be
18 consolidated, and the answers are in and you are moving
19 forward. We're working on that and we'll be trying to work
20 out.

21 MAGISTRATE JUDGE MAAS: In light of what Judge Daniels
22 has said and since none of us know when date the decision will
23 come down, what I suggest is that within 10 days after that
24 decision is issued the parties communicate with me in writing
25 both as to any revisions they suggest with respect to

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1 discovery. I have the letters that were sent in November. If
2 everybody's position is essentially the same as it was, two
3 lines saying that is fine. If there is some modifications, let
4 me know. What I would suggest is that within 10 days of the
5 decision, you communicate to me in writing both as to any
6 tweaks of the discovery schedule and as to plaintiffs' thoughts
7 regarding the consolidated complaint or complaints.

8 THE COURT: The June 14th date is basically what I
9 determined where I think we are and where I think we will be.
10 I think that is the latest date that we will be in a position
11 to be able to get that done and have that all before Magistrate
12 Judge Maas. In terms of a realistic schedule from my end, I
13 think that is the outside date.

14 As Magistrate Judge Maas as indicated, I think we will
15 be in a position to address those issues and resolve those
16 issues before that date and have plenty of time before
17 July 15th to resolve any issues that might be necessary to
18 resolve in conjunction with or before we start moving forward
19 with full-blown discovery. So the bottom line is so that
20 everybody can gear up, both plaintiffs and defendants. That is
21 when you should prepare to put aside some time and effort and
22 for folks for start dealing substantively with discovery, fact
23 discovery with regard to these cases.

24 That is the basic framework that I think that is going
25 to guide us all. I think that over the next two months

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1 substantial progress hopefully should be made.

2 Let me first hear from the plaintiffs and then I will
3 hear from the defense whether or not with regard to those
4 issues or whether they have other new issues that you want to
5 address right now.

6 MR. KREINDER: Your Honor, I think that is fine with
7 the plaintiffs. We look forward to the decision and we'll get
8 to work as soon as we see it.

9 MR. KELLOGG: Your Honor, Michael Kellogg on behalf of
10 the defense executive committee.

11 One question I would have is whether the Court
12 contemplates that those parties be dismissed under the FSIA or
13 personal jurisdiction or otherwise are going to receive partial
14 judgments of dismissal so that any appeals can take place and
15 they can be out of the case and not feel obliged to monitor
16 discovery going on for a period of time?

17 THE COURT: That is my intent. I haven't made a final
18 decision about that, but I have discussed that and I have
19 considered that. My leaning at this point is that that will be
20 done and that for those defendants who were dismissed out of
21 the case I will probably enter judgment and or certified so
22 that if the plaintiffs want to appeal they can on a different
23 track, and the defendants can go ahead and dismissed out of the
24 case can go ahead and get some finality within the Circuit with
25 regard to those issues.

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1 I can tell you at this point that I have considered
2 that and that is my inclination. The more I consider it and
3 the more I look at what the landscape looks like that I
4 anticipates after the decisions that is probably -- that is
5 probably the way I am going on this. If I hear some objection,
6 valid objections doing that, I think that it is most efficient
7 and in everyone's interest to go ahead and resolve that as
8 quickly as possible.

9 MR. CARTER: Your Honor, just briefly speaking to that
10 issue, at the last conference we had dialogue with the court
11 whether the plaintiffs would be permitted to amend their
12 pleadings to cure any pleading deficiencies which may
13 precipitate a dismissal in a particular case, and your Honor
14 indicated that the plaintiffs would be allowed that
15 opportunity.

16 So with regard to any potential final judgments or
17 54(b) judgments, I think we would just simply ask for the
18 opportunity to let the Court know whether or not we want to
19 pursue that with respect to a particular defendant.

20 THE COURT: Let me give some thought and some
21 discussion over the next few weeks about what would be an
22 efficient process for that. I think that I may set out a
23 process that once you see the decision if you think that it is
24 curable, then you at least give me some indication. I am not
25 going to put you through the task of giving many a full-blown

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1 proposal amendment complaint in those regards, but at least
2 some fairly specific indication in what way it can be cured.

3 For example, there are certain issues we know are not
4 curable. If you have sovereign immunity, you have sovereign
5 immunity. It is not curable. I guess it is possible there may
6 be some allegations that could be made that might cure some of
7 the other issues if that evidence or at least those facts can
8 be raised in good faith.

9 I think what is appropriate is that I would say within
10 30 days of receiving decision, you should indicate to me and
11 the other side in writing which defendants and on which issues
12 you would seek to cure and at least some basis for me to
13 understand the nature of what you say would cure the deficiency
14 to whatever extent that you think it is appropriate for me to
15 review. So if you do that within 30 days of getting the
16 decision, I will give them an opportunity to quickly respond
17 and either before or at the latest by July 15th, you will have
18 permission to do that and/or I will deny it as futile and then
19 I will enter judgment by July 15th also that we can decide
20 whether or not we're in that posture still here or whether or
21 not that you will appeal to the Second Circuit.

22 So I think that that could still work within that
23 schedule and not delay progress to either party

24 MR. CARTER: Thank you, your Honor.

25 THE COURT: So anything else from the defendants?

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1 I am confident that Magistrate Judge Maas and I are up
2 to speed and did a significant amount of work to get us where
3 we are now. I am confident that we can move forward
4 efficiently on that schedule. I just want to make sure that
5 everyone gears up. If there are any issues that you think that
6 need to be addressed within that schedule to keep us on that
7 schedule, bring them to my attention or Magistrate Judge Maas's
8 attention in writing so we can resolve any issues.

9 My attitude moving forward is always particularly as
10 to the next scheduled conference is always the same, my intent
11 is that the conference is there to keep us on track and resolve
12 any issues that need to be resolved to move us forward. And I
13 think the most useful and the best thing that will give us both
14 confidence is that if as we get close to July 15th, everything
15 is done, geared up, ready to go and the parties say, Judge,
16 there is no reason to waste our time bring to us in July 15th,
17 we're ready to go, and after July 15th we're moving forward and
18 then we'll schedule the next conference, as I said the standard
19 six-month conference, and any other issues that need to be
20 addressed regarding discovery with Judge Maas or any issues
21 addressed with me directly can be address.

22 There are other related motions out there. I know
23 there is at least, I believe, the National Commerce Bank motion
24 that is still being renewed and will be submitted until June 18
25 or somewhere around there. There are some other minor issues

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1 or motions -- I will not call them minor -- other motions,
2 default motions and those kinds of things.

3 Let me just say this and I will volunteer this at this
4 point just as guidance about the default: Given the nature of
5 the issues with some of the defendants, I put off granting
6 default motions for awhile until we gear it up. Think about
7 what default means and what may have to be done following a
8 default motion with regard to establishing the basis for
9 recovery and establishing the damages and those kinds of
10 things. Default motions may be a significant amount of work
11 and attention by you.

12 It may not even be appropriate to move forward with
13 any hearings or other related activity with regard to the
14 defaults until some substantial discovery has been accomplished
15 because it may be very well what the final determinations and
16 the final default judgments to be issued. As you move forward
17 think in terms of how what might will be an efficient process
18 to deal with that, when might be an appropriate time to deal
19 with that, and what would be necessary in order to really
20 effect the judgment in support of default motion.

21 So put that to the side thinking about some issues how
22 to handle that, but I think that I've been convinced that it is
23 more appropriate for the opposite in most cases to let the
24 default issues at least consider what is going to be relevant
25 in the discovery process after some extent there are certain

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1 defendants that it is appropriate to issue a default judgment
2 without any further hearing or any further activity. That is
3 the case.

4 I still haven't resolved whether or not if there are
5 other issues that arise with regard to the defendants that
6 particularly, the jurisdictional issues and how I have to
7 address that and whether I need to address that sua sponte or
8 raise those issues with the parties to convince me separately
9 that it is otherwise appropriate to enter a default judgment
10 against a particular defendant.

11 I just raise that issue now so as you think about this
12 process, think about what you want to do with that. I don't
13 want as I say to have the tail to be wagging the dog here. So
14 we may find out that we have to submit activity on the default
15 and it will complicate the discovery process as you go forward.
16 So think about those things.

17 Rest assured we've been all working diligently to get
18 this moving up to speed. Hopefully we can all work
19 cooperatively, professionally to move this efficiently along.
20 So I will anticipate that this is the schedule and it should be
21 major activities as we go toward the end of the year into the
22 next year.

23 Any other things that arise, if something we need that
24 this raises that you think you should be thinking about or
25 issues, bring them to my attention or Magistrate Judge Maas's

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1 attention as early a possible so we can keep this moving along.
2 What I will do is otherwise see you July 15th. And
3 unless you tell me. Judge, we don't need to see you July 15,
4 everything is done, let's move forward. Again, it is always
5 helpful for us if as we get closer to July 15th conference,
6 indicate what issues if we have issues that you want resolve at
7 that time or before that time, my attitude is try to resolve it
8 before that time so if it can be done otherwise we can be
9 prepared to discuss it further or resolve it at that time.

10 MR. MELLON: Your Honor, on an unrelated matter but on
11 the subject of not needing discovery but on the subject of
12 ready-to-go, on July 15th one the Hanly lawyers Mr. Richard
13 Haily addresses the Court and Mr. Haily advised the Court that
14 the Hanly lawyers were ready to file their proofs against the
15 Islamic State of Iraq. However, the Court directed us to give
16 the Court status report regarding our service of process.

17 I would like to advise the Court that on October 27th
18 Mr. Richard Haily and the other Hanly lawyers did in fact send
19 a very, very lengthy letter to the Court which is not on the
20 docket because on December 27th, 2007, we do have the exhibits
21 in great detailed showing the clerk certification of service as
22 it pertains to Iran and all the instrumentalities. Again, we
23 apologize for sending such a long letter, but essentially it
24 was a repeat of the December 27th, 2000 clerk certification.

25 I mention this, your Honor, because we have a bump in
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1 the road. As we were getting ready to file our proofs, which
2 are affidavits, videotape, testimony from Europe, etc., etc.,
3 Judge Royce Lamberth, Chief Judge of the District Court in
4 Washington D.C., issued what we regarded as a landmark opinion
5 regarding Iraq. In that landmark opinion the Judge said that
6 under 1605(a), the amendment to FSIA that that was the way to
7 proceed. It is a burden of proof matter.

8 SO accordingly, your Honor, we went back to the
9 drawing board and on March 1st of this year we had filed a
10 motion for leave to file our amended complaint under 1605(a).
11 I believe Judge Lamberth made clear THAT this is not a new
12 service issue. Not new defendants. It is just a burden of
13 proof issue. So we would ask the Court to please consider our
14 March 1st motion, motion to leave to file a complaint, our
15 third amended compliant under the amendments of the FSIA.

16 Here is why: As soon as your Honor gives us the green
17 light, we are in fact filing our proofs. I think at the last
18 conference the Court said maybe there be a hearing, maybe there
19 won't. The Court wanted to see the proofs. If you will
20 entertain that motion, we will file our proofs immediately
21 thereafter, which gets me to the second reason I would like to
22 address the Court.

23 When whether Richard Haily addressed the Court
24 March 15th announced that he was hoping to file the proofs but
25 for this September 30th opinion that we didn't know about, one

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1 counsel objected, which we weren't expecting. The objection
2 was that all our proofs against Iran, which are videotapes,
3 testimony, expert affidavits, should be filed under seal. We
4 never heard of that. Since time of talk, we investigated 35
5 cases against the Sovereign State of Iran in federal court here
6 in New York and Washington D.C. There has been no case ever
7 filed under seal. We have looked at local rules under federal
8 law regarding filing something under seal and we frankly don't
9 understand and can't conceive of it.

10 So I would ask the Court, since the Court ruled from
11 the bench, to consider that now or permit me to file a motion
12 to address that issue because it just doesn't seem appropriate
13 given the subject matter, the nature of American courts to file
14 any evidence under seal unless it is a matter of utmost
15 concern, criminal case or something of that sort.

16 So that is a request for clarification about the
17 under-seal issue that was raised and a request that our
18 March 1st motion be considered.

19 THE COURT: This is what I am going to ask you to do:
20 I would like you to, one, consult with the other plaintiffs,
21 appropriate plaintiffs attorneys about what you want to do now
22 that everyone has considered the full-blown discovery and we're
23 going on this schedule. I would like you to give me a letter
24 as early as possible before against the June 14th date that I
25 have given everybody else indicating that you consulted

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1 appropriately with other plaintiffs so I know whether or not
2 you are in agreement what you want to do. If you are not in
3 agreement, say you are not in agreement and they can respond to
4 the letter separately.

5 Then send me that letter so that the defense can
6 respond to that letter. So if anybody has any objections with
7 regard to sealing and unsealing or anything else, defense or
8 plaintiff, then I will know that, although they are not
9 technically the parties being represented here, we can consider
10 whether or not any name that we might contemplate might
11 adversely affect the conduct of the proceedings for others and.

12 Then you can either specifically reaffirm your
13 position with regard to moving forward and how to move forward
14 with your motion and/or modify it in whatever way you want to
15 modify it or tell me what your position is.

16 MR. MELLON: Thank you.

17 THE COURT: That is one of the things on my list right
18 in front of me. I usually don't like to give you a question, I
19 like to give an answer. I know that we have to address that
20 and that was one of the things I had in mind and had its own
21 separate issues when I raised the issue in January of defaults
22 and what is the appropriate way to proceed.

23 MR. MELLON: Thank you, your Honor.

24 MR. KREINDER: Your Honor, this is an issue I have
25 been involved in. I think I can save everyone a little time.

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1 First of all, the plaintiffs committee has no objection to
2 Mr. Mellon filing an amendment to his complaint. The
3 plaintiffs committee that represents the families of 3,000
4 people who were murdered, thousands of people who were injured,
5 and billions of dollar in property damage does oppose any
6 lawyer who represents less than 1 percent of the plaintiffs
7 group doing something that disadvantages all of the plaintiffs
8 in our opinion for reasons I can spell out at greater length.

9 The issue of actually recovering money from any of the
10 seven state sponsors of terrorism, involves litigation in
11 federal courts. It involves litigation such as we saw Libyan
12 Claims Resolution Act and involves diplomatic concerns.

13 All I will say on that topic now in open court is for
14 the reasons your Honor mentioned we oppose any single plaintiff
15 doing something that 99 percent of the plaintiffs disagree with
16 for really very well thought out reasons. I agree with
17 Mr. Mellon completely, Judge Lamberth's opinion is an
18 absolutely just reading. The thrust of it, and he is handling
19 all the litigation against Iran other than this case, is when
20 he surveys the \$7 billion in judgments that have been rendered
21 against Iran and takes account of the legislative changes that
22 were designed to facilitate recoveries and particularly to
23 facilitate punitive damages recoveries, he laments the
24 litigation posture of this case because none of the people who
25 have preceded to judgments against Iran have in fact gotten

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1 paid.

2 Of the seven sponsors of terrorism, the only
3 plaintiffs who have been paid are the plaintiffs I've been
4 representing for 21 years in the litigation against Libya. I
5 just thought it saves the time of letter exchange, we
6 vigorously oppose the hair on the tail of the dog doing
7 something that we think could kill the dog.

8 MR. MELLON: Your Honor, may I respond?

9 THE COURT: Sure.

10 MR. MELLON: Thank you.

11 Mr. Victor Saracini was the captain of the United
12 Flight 175, that is the second plain, the South Tower, his wife
13 and 60 or 70 other decedent families representing hundreds of
14 claims have been vigorously, persistently, intensely looking
15 not at Saudi Arabia, Saudi Arabia, not at airplanes, not at
16 skyscrapers, not all the other plaintiffs, not all the other
17 concerns, none of that. They have had one objective in 10
18 years and they are now ready to show this Court the results of
19 their extraordinary effort.

20 This is not a matter of 1 percent versus 99 percent.
21 This is a matter of the truth coming out. This is not a matter
22 of diplomacy, or whatever Mr. Kreindler has in mind. This is a
23 matter of a Court looking at evidence and making an appropriate
24 determination. Because counsel may not be ready because they
25 have a bigger fish to fry should not prejudice Mr. Victor

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1 Saracini or his family. We're only asking this Court to look
2 at evidence, to render an opinion, and perhaps have Magistrate
3 Mass render the final judgment in terms of damages.

4 Anything else frankly in my view, with all due
5 respect, is a subterfuge. The evidence is in hand. We want to
6 give it to you, your Honor. We want you to look at it. We
7 need your opinion.

8 THE COURT: I understand your position. The one
9 additional thing that I would ask you to do, though, is with
10 regard to the amended complaint, I would ask you to share that
11 with the plaintiffs committee first.

12 MR. MELLON: I shall.

13 THE COURT: So the best case scenario they might have
14 some helpful suggestions that might make it useful for both
15 sides in terms of particularly with my view that it would be
16 helpful if we had a last consolidated complaint. This is one
17 of the issues that I wanted to address in that way.

18 So I would like if you have some idea and they can
19 discuss with you what they think if they have some suggestions
20 one way or other or objections one way or another about your
21 opinion which is either consistent or inconsistent with the
22 claims here that might be awkward for you or for them.

23 MR. MELLON: Thank you.

24 THE COURT: Share that with them first before you do
25 and once at least you consulted on that, you don't have to

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1 agree on that, after I know you have consulted them then you
2 can submit it to me.

3 MR. MELLON: Thank you.

4 THE COURT: I would rather have them see it before I
5 see it as opposed to submitting it to me and then sharing.

6 MR. MELLON: Thank you.

7 THE COURT: I understand everyone's legitimate
8 positions and concerns and I will do my best and Magistrate
9 Judge Maas has been doing his best to accommodate. Our intent
10 at this point having picked this case in the posture we picked
11 it up in is to give everyone a fair and reasonable effective
12 forum to resolve these disputes. And although we have a lot of
13 lawyers here, we recognize that these are individual disputes
14 between individual plaintiffs and individual defendants. We're
15 mindful of that.

16 I think that most of the issues that you have raised
17 we've given consideration to. We don't have all the answers
18 yet either, but I think that we're in a process that we will be
19 able to move forward and resolve these issues efficiently step
20 by step and with regard to the ultimate issues that are
21 involved in these cases.

22 We will gear up and be ready to go. We'll see you on
23 July 15th.

24 Is afternoon a better time than the mornings?

25 MS. BIERSTEIN: Your Honor, at least for me I know
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21

1 morning would be better. I am going to be traveling later that
2 day so morning would be preferable.

3 MR. KREINDER: Your Honor, the only thing I would say
4 is a couple people fly into town so starting at 10:30 or so.

5 THE COURT: Let's say 10:30 on July 15th.

6 As I say, let's try to resolve as many issues, if not
7 all issues, before that time so we can know that confidently we
8 are ready to move forward on this schedule. I think that we
9 should be on track by that date.

10 Again, if you have any issues that we haven't
11 contemplated, let us know and we'll factor those in in the
12 meantime.

13 Anything else?

14 MR. MELLON: Thank you, your Honor.

15 THE COURT: See you on the 15th.

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